

Remarks

Amendments to the Claims

The amendments to the claims present the claims in better form for consideration on appeal and comply with requirements of form expressly set forth in the Final Office Action. The amendments do not add new matter and do not require a new search. Applicants respectfully request entry of the amendments.

Rejection Under 35 U.S.C. § 102(e)

The Examiner maintained the rejection of claims 1, 3, 4, 8, 9, 28, and 29 under 35 U.S.C. § 102(e) over Tettelin (WO 2004/018646). Claim 3 is canceled to advance prosecution. Applicants traverse the rejection of claims 1, 4, 8, 9, 28, and 29.¹

The Examiner states that Tettelin teaches “[o]ne combination composition [that] consists of two GBS polypeptides or fragments thereof.” This generic disclosure is not sufficient to anticipate the composition of independent claim 1, which names two specific GBS polypeptides: GBS80 and GBS322. As the Examiner acknowledges on page 6, “the limitation ‘comprising’ in the instant claim(s) allows any number of isolated GBS polypeptides to be present in the claimed composition **as long as the recited GBS polypeptides are comprised therein**” (emphasis added). The disclosure of Tettelin is not sufficient to anticipate independent claim 1. To anticipate claim 1, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). That is, “there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention.” *Scripps Clinic & Research*

¹ As an initial matter, Applicants note that the rejection refers to “the limitation ‘at least one GBS polypeptide antigens’ [sic] in claim 1;” claim 1 does not contain the recitation “at least one . . .”

Found. v. Genentech, Inc., 927 F.2d 1565, 1576 (Fed. Cir. 1991).Tettelin does not meet this standard because Tettelin does not disclose any composition specifically comprising any of the combinations recited in claim 1.

Please withdraw the rejection.

Rejection of Claims 1, 3, 4, 8, and 9 Under 35 U.S.C. § 112 ¶ 1

Claims 1, 3, 4, 8, and 9 are rejected under 35 U.S.C. § 112 ¶ 1. The Examiner asserts that the recitation “wherein, in an Active Maternal Immunization Assay . . .” is new matter in connection with the recited protein fragments. To advance prosecution, claim 3 is canceled and independent claim 1 is amended to remove the recitation. Please withdraw the rejection.

Rejection Under 35 U.S.C. § 112 ¶ 2

Claim 3 is rejected as indefinite under 35 U.S.C. § 112 ¶ 2 for lacking antecedent basis for the term “GBS-challenged pups.” Claim 3 is canceled to advance prosecution, which moots the rejection.

Respectfully submitted,
BANNER & WITCOFF, LTD.

/Lisa M. Hemmendinger/

Date: March 9, 2011

Lisa M. Hemmendinger
Registration No. 42,653

Customer No. 22907
202-824-3000